

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA**

THE CITY OF HUNTINGTON,

Plaintiff,

v.

AMERISOURCEBERGEN DRUG
CORPORATION *et al.*,

Defendants.

Civil Action No. 3:17-01362
Hon. David A. Faber

CABELL COUNTY COMMISSION,

Plaintiff,

v.

AMERISOURCEBERGEN DRUG
CORPORATION *et al.*,

Defendants.

Civil Action No. 3:17-01665
Hon. David A. Faber

**DEFENDANTS' UNOPPOSED MOTION FOR ENTRY OF ORDER PROVIDING FOR
USE OF THIRD-PARTY DISCOVERY IN RELATED STATE COURT LITIGATION**

Defendants respectfully move for entry of an order that will permit the use of third-party discovery taken in this litigation (including documents and deposition testimony) in the related opioid litigation pending before the Mass Litigation Panel in the Circuit Court of Kanawha County, West Virginia ("MLP Litigation").¹ Plaintiffs Cabell County Commission and the City of Huntington have advised that they do not oppose the relief requested in this motion.

¹ *In re: Opioid Litigation*, Civil Action No. 19-C-9000, Circuit Court of Kanawha County, West Virginia.

The parties in the MLP Litigation — including all Defendants in this litigation, who are also Defendants in the MLP Litigation — have reached an agreement that any third-party discovery taken in this litigation will be deemed produced in the MLP Litigation, and that agreement has been endorsed (in the form of an order) by the Discovery Commissioner in the MLP Litigation.² The purpose of this agreement is to promote efficiency. Absent sharing of third-party discovery between the two litigations, the parties in the MLP Litigation will need to undertake the burden of repeating third-party discovery already taken in this litigation. Such duplicative discovery would also burden the third parties, who would be required to re-produce documents they have already produced. The MLP parties' agreement is also consistent with the federal-state cooperation anticipated in the MDL Protocol for State and Federal Coordination entered by Judge Polster in the MDL.³

To assist in effectuating the agreement reached in the MLP Litigation, Defendants in this litigation ask the Court, without opposition, to enter an order providing that all third-party discovery taken in this litigation — including third-party documents, deposition testimony, and

² Third-Party Discovery Protocol, *In re: Opioid Litigation*, Civil Action No. 19-C-9000, Circuit Court of Kanawha County, West Virginia, Sept. 29, 2020 (Trans. ID 65972930), attached at Exhibit A. The parties' agreement in the MLP Litigation specifically provides that the parties there may take additional discovery of third parties. *See id.* Therefore, nothing in this motion is meant to imply the extent of third-party discovery conducted in this litigation or to prevent the parties in the MLP Litigation from conducting non-duplicative discovery of third parties.

³ Protocol for State and Federal Court Coordination, *In re: National Prescription Opiate Litigation*, MDL No. 2804, Case No. 17-MD-2804, Doc. No. 1029, at 1 (N.D. Ohio Oct. 9, 2018) ("The Court's goal is to engage in a cooperative effort to coordinate, to the extent practicable, parallel and overlapping proceedings in the federal and state cases in order to reduce costs and avoid unnecessary duplication of effort.").

other materials produced or elicited in Tracks 1 and 2 of the federal MDL Litigation⁴ and made available to the parties in this litigation — may be used by the parties in the MLP Litigation. A proposed order granting the requested relief accompanies this motion. To protect the confidentiality of documents or testimony designated “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY” in this litigation, the proposed order (1) requires that all third-party documents shared with the MLP Litigation shall be subject to the protective order pending there, which provides protections for the same categories of confidential documents;⁵ and (2) provides that third parties that designated produced materials confidential in this litigation shall receive notice, and have an opportunity to object, before their confidential materials are permitted to be used in the MLP Litigation.

For the foregoing reasons, Defendants respectfully request that the Court enter the proposed order that accompanies this motion.

Dated: October 23, 2020

Respectfully submitted,

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⁴ *In re: National Prescription Opiate Litigation*, MDL No. 2804, Case No. 17-MD-2804 (N.D. Ohio).

⁵ Stipulated Protective Order, *In re: Opioid Litigation*, Civil Action No. 19-C-9000, Circuit Court of Kanawha County, West Virginia, July 30, 2020 (Trans ID 65810931), attached at Exhibit B.

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on this 23rd day of October, 2020 the foregoing *Defendants' Unopposed Motion for Entry of Order Providing for Use of Third-Party Discovery in Related State Court Litigation* was served using the Court's CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Timothy C. Hester
Timothy C. Hester (DC 370707)